

Town of Cedar Lake – Board of Zoning Appeals
Public Meeting Minutes
December 13, 2012

The Cedar Lake Board of Zoning Appeals held their Public Meeting on Thursday, December 13, 2012. The meeting was called to order at approximately 7:02 p.m. at the Cedar Lake Town Hall. Those members present were: Eric Burnham, Tim Kubiak, Jeff Bunge, Vice Chairman, and Jeremy Kuiper, Chairman. Attorney Tim Kuiper, of Austgen, Kuiper & Associates, Building Commissioner Jack Slager, and Jenn Montgomery, Recording Secretary, were also present. Member Diane Cusack was not present at tonight's meeting.

Minutes: Motion by Eric Burnham and seconded by Jeff Bunge to approve the minutes of the November 15, 2012 public meeting. After a voice vote, the motion carried 4-0.

Public Hearings:

Old Business:

1. Pritt – Developmental Variance

Owner/Petitioner: David Pritt, 12704 Webster Street, Cedar Lake, Indiana 46303

Vicinity: 12704 Webster Street, Cedar Lake, Indiana 46303

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title VIII – Residential (R-2) Zoning District, Section 4: Area, Width and Yard Regulations: C. Side Yard: On each lot, except as otherwise specified, there shall be two (2) side yards, each having a width of not less than eight (8) feet...; **and** Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title VIII – Residential (R-2) Zoning District, Section 4: Area, Width and Yard Regulations: D. Rear Yard: There shall be a rear yard on not less than twenty-five percent (25%) of the area of the depth of the lot; **and** Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title VIII – Residential (R-2) Zoning District, Section 4: Area, Width and Yard Regulations: E. Building Coverage: Not more than twenty-five percent (25%) of the area of the lot may be covered by buildings and/or structures.

Petitioner is requesting a Developmental Variance to allow an eighteen by thirty (18x30) foot deck within the required side yard setbacks, within the required rear yard setback of twenty-five (25) feet and to allow more than twenty-five percent (25%) lot coverage. The proposed deck will have side yard setbacks of less than eight (8) feet on either side, a rear yard setback of approximately fifteen and one-half (15.5) feet and lot coverage totaling approximately thirty-five percent (35%).

Continued from September 13, October 11, and November 15, 2012 Public Meetings

Attorney to Review Legals: Attorney Tim Kuiper stated this item was properly advertised and properly continued to tonight's meeting.

Petitioner's Comments: Not present.

Board's Decision: Discussion occurred regarding the number of times this item has been continued. Motion by Tim Kubiak and seconded by Eric Burnham to grant a final continuance for this item. After a roll call vote, the motion carried 4-0.

New Business:

1. Hochbaum – Developmental Variance

Owner/Petitioner: Jasper Industries Corp, Jamie Hochbaum, 3676 E 157th Avenue, Hebron, Indiana

Vicinity: 8303 Lakeshore Drive, Cedar Lake, Indiana 46303

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title VIII – Residential (R-2) Zoning District, Section 3: Height Regulations: The maximum height of buildings and other structures erected or enlarged in this Zoning District shall be two (2) stories, not to exceed thirty (30) feet at its peak.

Petitioner is requesting a Developmental Variance to allow an addition to the existing home that exceeds the thirty (30) foot height restriction. The proposed addition to the home will have a height of approximately thirty-eight (38) feet at the peak.

Attorney to Review Legals: Attorney Tim Kuiper stated the notices and publications for this item are in order for tonight's meeting.

Petitioner's Comments: Jamie Hochbaum stated he is adding an addition to his existing home, which will result in the home exceeding the thirty (30) foot restriction, for a total height of approximately thirty-eight (38) feet.

Remonstrators: None.

Building Department's Comments: Jack Slager stated that he has been to the site and indicated that Mr. Hochbaum was unaware that he needed a variance. Once this was realized, the Building Department put him on the agenda for approval for the height. Because the home is set much lower than the road, the height of the home only exceeds the height of the road by about eight to ten (8-10) feet. However, from the lakeside, the home exceeds the restriction by approximately eight (8) feet.

Board's Discussion: Jeff Bunge asked how much of the structure has already been completed, as the work began before a permit was obtained. Mr. Hochbaum stated that only framing and a partial roof have been added so far. Jeff Bunge asked if this issue was missed on the building permit application. Jack Slager indicated that a building permit was not applied for prior to the work commencing.

Board's Decision: Motion by Tim Kubiak and seconded by Eric Burnham to grant the variance as requested, to include the Findings of Fact:

- The approval will not be injurious to the public health, safety, morals and general welfare of the community;
- The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner; and
- The strict application of the terms of the Zoning Ordinance, as amended from time to time, will result in practical difficulties in the use of the property.

After a roll call vote, the motion carried 3-1, with Jeff Bunge voting against.

2. Bunge – Special Use Exception Variance

Owner: Hamstra Wilbert Inc., 12028 N 200 West, Wheatfield, Indiana 46392
Petitioner: Al Bunge, Sportsman's Den, Inc., PO Box 2038, Cedar Lake, Indiana
Vicinity: 9905 W 133rd Avenue, Cedar Lake, Indiana
Request: Petitioner is requesting a Special Use Variance from Zoning Ordinance No. 496, Title XII – Neighborhood Business B-1 Zoning District, Section 3: Special Use Exceptions: The following uses may be permitted, provided they are approved by the Board of Zoning Appeals and are subject to any conditions placed upon them by the Board of Zoning Appeals. A. Any use permitted in a Community Business (B-2) Zoning District.

Petitioner is requesting a Special Use Exception to allow a sporting goods store, to include the sale of firearms.

Attorney to Review Legals: Attorney Tim Kuiper stated the notices and publications for this item are in order for tonight's meeting.

Petitioner's Comments: Al Bunge thanked Recording Secretary Jenn Montgomery, as he felt she went out of her way to help him with billing issues with the newspaper. Mr. Bunge stated that he would like to open a sporting goods store in the old CVS building on 133rd Avenue. The business will be run primarily by Mr. Bunge and his sons Brian and Jake and his daughter-in-law Julie will manage the business. The store will be called Sportsman's Den and will include the sale of firearms. Mr. Bunge stated he would also like to store and sell canoes and kayaks in a fenced-in area on the east side of the building and possibly on the sidewalk, but only during business hours.

Remonstrators: John Schutz, 13522 Schneider Court, **FOR**. Mr. Schutz stated he has known Mr. Bunge for many years and that he is a good businessman and will run another first-class operation in the Town.

Building Department's Comments: Jack Slager stated he has not been inside the building and reminded Mr. Bunge to obtain any necessary permits.

Board's Discussion: Tim Kubiak asked how large the fenced-in area will be. Al Bunge stated that it will not be very big, approximately twenty foot by twenty foot (20'x20'). Tim Kubiak asked if parking will then be eliminated on the side of the building. Mr. Bunge stated that there is currently a storage trailer on the side, which he may or may not keep, and that parking will most likely be eliminated on that side. Jeremy Kuiper asked if a Federal Firearms License has been obtained. Mr. Bunge stated he has not received the license, but it has been applied for. Jeremy Kuiper asked what the hours of operation will be. Mr. Bunge stated hours will probably be around 8:00-6:00 Monday through Friday, with shorter hours on Saturday. Sunday hours are undetermined as of now. Jeremy Kuiper asked if Mr. Bunge is planning on having a firing range of any kind. Mr. Bunge stated that he would like to have four to six (4-6) archery lanes, but no range will be available for firearms. Tim Kubiak stated concerns regarding the location of the outdoor storage area being away from the building and preferred that the area be next to the building.

Discussion occurred regarding the placement of the storage area and the storage trailer that is currently on the property. The fenced-in area will be on the east side of the building, toward the rear of the building. Mr. Bunge indicated he would prefer to keep the storage trailer, as the store does not have much indoor storage. Attorney Tim Kuiper stated that this type of trailer is not allowed in this zoning district, but that the Board can approve the use of it at this time.

Board's Recommendation to the Town Council: Motion by Tim Kubiak and seconded by Eric Burnham to send a favorable recommendation to the Town Council to allow a sporting goods store, to include the sale of firearms, and to allow a twenty foot by twenty foot (20'x20') outdoor storage area at the rear of the parking lot, contingent that the existing storage trailer be removed, to include the Findings of Fact:

- The establishment, maintenance or operation of the Special Use or Special Exception will not be detrimental to or endanger the public health, safety, comfort, morals or general welfare, and is in accordance with the Comprehensive Master Plan of the Town;
- The Special Exception or Special Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the community;
- The establishment of the Special Exception or Special Use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the Zoning District;
- The Special Exception or Special Use shall be required to comply with reasonable time limitations on commencement and duration of Special Exception or Special Use, as well as holder of rights to Special Exception or Special Use;
- Adequate utilizes, access roads, drainage and/or other necessary facilities will be provided;
- Adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and
- The Special Exception or Special Use shall in all other respects conform to the applicable regulations of the Zoning District in which it is located and the Board of Zoning Appeals and Town Council finds that there is a public necessity for the Special Exception or Special Use. The following listed Special Exceptions may be recommended by the Town Council in the Zoning Districts stated upon the terms and conditions provided for in this Section 2, of TITLE XXX:

After a roll call vote, the motion carried 4-0.

3. Hosteny – Developmental Variance

Owner: Frederick & Laura Hosteny, 10840 Ridgewood, Palos Park, Illinois 60464

Petitioner: B&D Regional Builders, LLC – Brian Pause – 428 Orchard Drive, Crown Point, IN 46307

Vicinity: 7708 W 134th Place, Cedar Lake, Indiana

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title VIII – Residential (R-2) Zoning District, Section 3: Height Regulations: The maximum height of buildings and structures erected or enlarged in this Zoning District shall be two (2) stories, not to exceed thirty (30) feet at its peak; **and** Section 4: Area, Width and Yard Regulations: B. Front Yard: There shall be a front yard between the building line and the highway and street right-of-way lines as follows: 4) On all other streets, a distance of thirty (30) feet; **and** C) Side Yard: On each lot, except as otherwise specified, there shall be two (2) side yards, each having a width of not less than eight (8) feet...; **and** D) Rear Yard: There shall be a rear yard on not less than twenty-five percent (25%) of the depth of the lot; **and** E. Building Coverage: Not more than twenty-five percent (25%) of the area of the lot may be covered by buildings and/or structures; **and** Title XX – Supplementary Zoning District Regulations, Section 23: General Area Provisions: A. Area Requirements: 2) Recorded Lots Less than Minimum Area: Lots of record at the time of the enactment of this Zoning Ordinance, as amended from time to time, which have less than the minimum area requirements for Residential Zoning Districts, may nevertheless be used for any use permitted therein, except that for dwellings the lot must have a width of at least fifty (50) feet and an area of at least five thousand (5,000) square feet.

Petitioner is requesting a Developmental Variance to allow a new three (3) story home with a height of approximately thirty-three (33) feet at the peak, a front yard setback of approximately twenty-three (23) feet, a side yard setback of approximately six (6) feet, a rear yard setback of approximately thirteen (13) feet, building coverage of approximately twenty eight and one-half percent (28.5%), a lot width of approximately thirty (30) feet, and a lot size of approximately three thousand two hundred ten (3,210) square feet. The new home will be constructed on an existing foundation.

Attorney to Review Legals: Attorney Tim Kuiper stated the notices and publications for this item are in order for tonight's meeting.

Petitioner's Comments: Brian Pause was present on behalf of B & D Regional Builders, and was accompanied by homeowner Fred Hosteny. Mr. Pause stated that he would like to tear down the existing home and rebuild on the existing foundation. Because of water concerns, an extra three (3) courses of block will be laid, which will result in the home exceeding the height restriction. The home will be approximately thirty-three (33) feet tall at the peak. There will be no garage on the property, so the third half-story will be used as storage.

Remonstrators: Frank Brongiel, 7504 W 134th Place; **FOR.** Mr. Brongiel stated that the proposed home will be good for the town and an improvement to the neighborhood.

Building Department's Comments: No issues. A building permit will need to be obtained, as an application has not yet been received.

Board's Discussion: Discussion occurred regarding the cantilevers on the home, which reduces the distance of the setback. The cantilevers are on each side of the home, and are two (2) feet out. These would make the side yard setback four (4) feet, rather than six (6) feet. Mr. Pause stated that the cantilevers are mostly for aesthetics to get away from a boxy-looking home. Because the lot gets wider going toward the lake, there is only a portion of the yard that would be approximately four (4) feet. Jeff Bunge stated he has visited the site and, because of the flat topography, did not think the home needs to be so tall. Discussion occurred regarding other homes in the area and that another three (3) story home was recently approved on the same street. Jeff Bunge asked if there will be any other structures on the lot; no. Tim Kubiak asked if the foundation has been inspected. Brian Pause stated the foundation was improved about six (6) years ago and is in good condition. Jack Slager stated that this paperwork should be submitted with the building permit application. Tim Kubiak asked if the cantilevers can be reduced by one (1) foot. Mr. Pause stated no problem with the size reduction. Jeremy Kuiper stated that the Board usually allows improvements to homes as long as they do not become more non-conforming than they already are. The cantilevers would make the proposed home more non-conforming. Tim Kubiak asked if a variance is needed to allow a new home with no garage. Attorney Tim Kuiper stated that because the home is being built on an existing foundation, a variance would not be needed.

Board's Decision: Four (4) motions were made, as follows:

Motion by Tim Kubiak and seconded by Eric Burnham to grant the variance as requested, contingent that the cantilevers are reduced to one (1) foot to allow for a five (5) foot side yard, to include the Findings of Fact:

- The approval will not be injurious to the public health, safety, morals and general welfare of the community;
- The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner; and
- The strict application of the terms of the Zoning Ordinance, as amended from time to time, will result in practical difficulties in the use of the property.

After a roll call vote, the motion carried 2-2, with Jeff Bunge and Jeremy Kuiper voting against.

Motion by Tim Kubiak to defer. Motion died due to lack of second.

Motion by Tim Kubiak and seconded by Eric Burnham to allow a height variance of thirty-three (33) feet at the peak, to include the Findings of Fact (listed above). After a roll call vote, the motion carried 3-1, with Jeff Bunge voting against.

Motion by Tim Kubiak and seconded by Eric Burnham to grant the remainder of the variance requests, contingent that the side cantilevers are reduced to one (1) foot, to include the Findings of Fact (listed above). After a roll call vote, the motion carried 3-1, with Jeremy Kuiper voting against.

4. Brongiel – Developmental Variance

Owner/Petitioner: Frank J Brongiel & Patricia A Brongiel Tr, 12636 S Menard, Alsip, Illinois 60608

Vicinity: 7504 W 134th Place, Cedar Lake, Indiana

Request: Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title XXIII – Accessory Regulations, Section 1: General Accessory Regulations: A.5) There shall be a minimum six (6) foot setback from any and all side and rear property lines and a minimum ten (10) foot separation or distance from all other buildings; **and**

Title VIII – Residential (R-2) Zoning District, Section 4: Area, Width and Yard Regulations: E. Building Coverage: Not more than twenty-five percent (25%) of the area of the lot may be covered by buildings and/or structures.

Petitioner is requesting a Developmental Variance to allow an eight foot by twelve foot (8'x12') shed, with a side yard setback of approximately one (1) foot and a separation of approximately three (3) feet from the pavilion.

Attorney to Review Legals: Attorney Tim Kuiper stated the notices and publications for this item are in order for tonight's meeting.

Petitioner's Comments: Frank Brongiel stated that prior to the road reconstruction that occurred in his neighborhood, water would drain through his yard and into his existing shed. The shed has since become rotted, and Mr. Brongiel would simply like to replace the shed.

Remonstrators: None.

Building Department's Comments: No issues.

Board's Discussion: Discussion occurred regarding the location of the shed. Mr. Brongiel clarified that the shed will be in the same location of the existing shed. The proposed shed will be lined up with the pavilion. There is not much room in the rear yard, so meeting the required setback is not necessarily possible. The shed would be approximately three (3) feet from the pavilion and approximately sixteen (16) feet from the rear of the home.

Board's Decision: Motion by Tim Kubiak and seconded by Jeff Bunge to grant the variance as requested, contingent that the shed is lined up evenly with the pavilion, to include the Findings of Fact:

- The approval will not be injurious to the public health, safety, morals and general welfare of the community;
- The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner; and
- The strict application of the terms of the Zoning Ordinance, as amended from time to time, will result in practical difficulties in the use of the property.

After a roll call vote, the motion carried 4-0.

5. Bobb Auto Group – Use and Developmental Variance

Owner: John G & Terry Schutz, 13522 Schneider Court, Cedar Lake, Indiana

Petitioner: Mark K. Gruenhagen, 833 W Lincoln Highway, Ste 110E, Schererville, Indiana

Vicinity: 11009 W 133rd Avenue, Cedar Lake, Indiana

Request: Petitioner is requesting a Use Variance from Zoning Ordinance No. 496, Title XXII – Sign Regulations, Section 1: Prohibited Signs: 9. Signs which display any flashing or intermittent lights, or lights changing intensity or color, except signs indicating time or weather conditions; **and** Petitioner is requesting a Developmental Variance from Zoning Ordinance No. 496, Title XXII – Sign Regulations, Section 3: Signs in Business or Industrial Districts: A.c. The maximum sign sizes shall not exceed: ii. In the case of two (2) such on-premise signs, one (1) sign shall be no more than sixty (60) square feet in size and one (1) sign shall be no more than thirty-two (32) square feet in size.

Petitioner is requesting a Use Variance to allow a four foot by ten foot (4'x10') digital message sign and a Developmental Variance to allow a size that exceeds the maximum allowed sign size. The digital message center will be added to the existing sign along US Highway 41, for a total sign size of approximately eighty-four (84) square feet. The existing sign along W 133rd Avenue is approximately ninety-six (96) square feet in size, which will remain unchanged.

Attorney to Review Legals: Attorney Tim Kuiper stated the notices and publications for this item are in order for tonight's meeting. Attorney Kuiper stated that no new signs will be installed, the size request is simply to clean up the signage and make everything compliant by the Board.

Petitioner's Comments: Attorney Mark Gruenhagen was present tonight on behalf of Bobb Auto Group to request a digital message sign. The digital message sign will be four feet by ten feet (4'x10') in size and will be placed on the existing sign along US Highway 41.

Remonstrators: John Schutz of 13522 Schneider Court; **FOR**. Mr. Schutz stated he is the owner of the property. Mr. Schutz stated that Mr. Bobb of Bobb Auto Group has assured him that his company will follow whatever the Board allows.

Building Department's Comments: No issues. Jack Slager stated he will look into what can be done regarding the enforcement of digital message sign regulations.

Board's Discussion: Tim Kubiak stated concerns regarding the use of digital signs and that it seems that almost every business that has obtained a variance has not followed the regulations set forth by the Board. Discussion occurred regarding safety issues when signs are flashing and causing a distraction to passers-by. Discussion occurred regarding enforcement. Attorney Gruenhagen assured the Board that Bobb Auto Group will follow any restrictions that are set forth by the Board.

Board's Decision – Developmental Variance: Motion by Tim Kubiak and seconded by Jeff Bunge to grant the variance as requested, to include the Findings of Fact:

- The approval will not be injurious to the public health, safety, morals and general welfare of the community;
- The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner; and
- The strict application of the terms of the Zoning Ordinance, as amended from time to time, will result in practical difficulties in the use of the property.

After a roll call vote, the motion carried 4-0.

Board's Recommendation to the Town Council – Use Variance: Motion by Tim Kubiak and seconded by Eric Burnham to send a favorable recommendation to the Town Council for a digital sign, contingent that the sign does not flash, messages remain for a minimum of six (6) seconds and messages do not scroll from side to side, to include the Findings of Fact:

- The approval will not be injurious to the public health, safety, morals and general welfare of the community;
- The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner;
- The need for the Variance arises from some condition peculiar to the property involved;
- The strict application of the terms of the Zoning Ordinance, as amended from time to time, will constitute an unnecessary hardship if applied to the property for which the Variance is sought; and
- The approval does not interfere substantially with the Comprehensive Master Plan of the Town.

After a roll call vote, the motion carried 4-0.

Public Comment: None.

Adjournment: Meeting was adjourned at approximately 8:09 p.m.

Diane Cusack

Tim Kubiak

Eric Burnham

Jeff Bunge

Jeremy Kuiper

Attest: _____
Jenn Montgomery, Recording Secretary